

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Krista Kano	Team: Team # 2	CCRB Case #: 201307133	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/01/2013 1:42 AM	Location of Incident: Spofford Avenue and Faile Street	Precinct: 41	18 Mo. SOL 2/1/2015	EO SOL 2/1/2015	
Date/Time CV Reported Thu, 08/01/2013 1:42 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/06/2013 3:03 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ahsan Zafar	03773	949822	041 PCT
2. POM Scott Berger	10210	948659	041 PCT
3. POF Brittany Mcgee	12166	949303	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ahsan Zafar	Abuse: PO Ahsan Zafar questioned § 87(2)(b)	
B.POF Brittany Mcgee	Abuse: PO Brittany McGee searched § 87(2)(b)'s bag.	
C.POM Ahsan Zafar	Abuse: PO Ahsan Zafar frisked § 87(2)(b)	
D.POM Scott Berger	Force: PO Scott Berger used physical force against § 87(2)(b)	
E.POM Scott Berger	Force: PO Scott Berger used pepper spray against § 87(2)(b)	
F.POF Brittany Mcgee	Discourtesy: PO Brittany McGee spoke discourteously to § 87(2)(b)	

Case Summary

On August 1, 2013, § 87(2)(b) called IAB to file a complaint on behalf of herself and her brother, § 87(2)(b) original log #2013-32770 (encl. 3A-3B). On August 6, 2013, the case was received by the CCRB (encl. 3C-3D).

On August 1, 2013 around 1:42 a.m., § 87(2)(b) rode his bike and almost ran into an officers' car at the intersection of Spofford Avenue and Faile Street in the Bronx. § 87(2)(b) ran, and was ultimately arrested. The following allegations resulted:

- **Allegation A—Abuse of Authority: PO Ahsan Zafar questioned § 87(2)(b)**
- **Allegation B—Abuse of Authority: PO Brittany McGee searched § 87(2)(b)'s bag.**
- **Allegation C—Abuse of Authority: PO Ahsan Zafar frisked § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D—Force: PO Scott Berger used physical force against § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E—Force: PO Scott Berger used pepper spray against § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
- **Allegation F—Discourtesy: PO Brittany McGee spoke discourteously to § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statement

Victim: § 87(2)(b)

- § 87(2)(b) is a 5'6" tall, 132-pound black man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.
- § 87(2)(b)

CCRB Statement

On September 13, 2013, § 87(2)(b) provided a phone statement (encl. 4B) and on October 10, 2013, he was interviewed at the CCRB (encl. 4E-4F). § 87(2)(g)

On August 1, 2013 around 1:42 a.m., § 87(2)(b) rode his bike southbound on Faile Street, a northbound one-way street. A radio played in his backpack, but there was nothing else in it. He saw an unmarked black or gray Crown Victoria driving down Spofford Avenue. At the intersection of Spofford Avenue and Faile Street, the Crown Victoria pulled into the intersection in front of § 87(2)(b). § 87(2)(b) stopped his bike so that he did not run into the Crown Victoria.

There were three officers inside the car. PO1, identified by the investigation as PO Brittany McGee, was described as a light-skinned, 5'6" tall, heavy Hispanic woman in her mid-20s with dark hair in a bun, sitting in the back seat. PO2, identified as PO Ahsan Zafar, was described as a 6' tall, light-skinned Hispanic man in his mid-20s with dark hair, a long nose and thin eyes,

sitting in the passenger seat. PO3, identified by the investigation as PO Scott Berger, was described as a 5'7" to 5'8" tall Hispanic man, sitting in the driver seat. PO Berger looked like he weighed more than § 87(2)(b) who weighs 132 lbs.

PO Zafar asked why § 87(2)(b) was always riding his bike around the area. § 87(2)(b) asked what he was talking about. All three officers exited the car. PO McGee asked what was in § 87(2)(b)'s book bag and he said nothing. PO McGee told § 87(2)(b) to let her see what was in the bag.

PO McGee grabbed § 87(2)(b)'s backpack and began to unzip it. PO Zafar frisked § 87(2)(b)'s legs, and then § 87(2)(b) ran southbound down Faile Street because he did not want to be bothered by the officers. § 87(2)(b) did not see if PO McGee looked into his backpack or reached inside.

§ 87(2)(b) ran a few feet, and felt two hands, identified by the investigation as PO Zafar's, push him on his upper back. He fell down onto his face and landed on the right side of his body. He felt an officer, identified by the investigation as PO Zafar, sitting on top of him, but did not see which officer. He heard officers, identified by the investigation as PO Zafar and PO Berger, yelling "Stop resisting" multiple times, but could not estimate how many times. An officer, identified by the investigation as PO Zafar, grabbed his left arm and twisted it behind his back. § 87(2)(b) was lying on top of his right arm, so officers could not grab it.

§ 87(2)(b) squirmed and asked the officers what they were doing. An officer, identified by the investigation as PO Berger, pepper sprayed him three times. The officers did not threaten to use the pepper spray before actually using it. An officer, whom he did not see, punched § 87(2)(b) in the face. § 87(2)(b) could not remember if he was punched and pepper sprayed before or after he was handcuffed.

Officers walked § 87(2)(b) to a car and they transported him to the 41st Precinct stationhouse. He did not see who transported him or who was driving because the pepper spray burned his eyes. He heard his sister yelling that someone had recorded it and § 87(2)(b) later found out that a friend, § 87(2)(b) last name unknown, had recorded the incident with his phone. § 87(2)(b) was also arrested and the officers did not return his phone.

Once he was released, § 87(2)(b) went to a clinic on § 87(2)(b) § 87(2)(b). He had scratches on his right scapula and on top of his right shoulder. § 87(2)(b)'s sister took photos of his scratches with her phone, but they were not good quality and she no longer had the photos.

Complainant/Victim: § 87(2)(b)

Phone Statement

On August 14, 2014, § 87(2)(b) provided a phone statement (encl. 4A).

§ 87(2)(b) was in a parking lot when someone came up and said that officers were talking to her brother, § 87(2)(b) across the street. § 87(2)(b) saw that her brother tried to run away from the officer. § 87(2)(b) believed they used necessary force to take him down, but once he was on the ground, she felt the force was excessive.

Two officers, identified by the investigation as PO Zafar and PO Berger, held down his legs and tried to handcuff him. PO Berger, described as a tall white man wearing a vest, had his knee on § 87(2)(b)'s face. PO Berger pepper sprayed § 87(2)(b) directly in his eyes and punched him three times while yelling, "Stop fucking moving." § 87(2)(b) yelled at the officers not to hurt her brother and yelled at § 87(2)(b) to stay down. PO McGee, described as a 5'5" tall white woman with a ponytail wearing a vest, told § 87(2)(b) "Step the fuck back."

§ 87(2)(b) called 911 during the incident. Her friend, § 87(2)(b) witnessed the incident and recorded it with his phone. Officers confiscated his phone as evidence. § 87(2)(b) later went to the 41st Precinct and saw PO McGee there. She stated that officers took the video footage of the incident from Mama Maria's Deli as evidence.

Attempts to Contact Civilians

Between August 14, 2013 and September 10, 2013, § 87(2)(b) was called five times and sent two letters. On August 14, 2013, § 87(2)(b) confirmed contact information, provided a statement and scheduled an interview for August 22, 2013, which she missed. On August 27, 2013 a voicemail was left and a missed appointment letter was sent, which was not returned to the CCRB. On September 4, 2013, a voicemail was left. On September 5, 2013, § 87(2)(b) called the CCRB, and left a message asking to be called back. On September 5, 2013 and September 10, 2013, voicemails were left. The final please call letter was sent on September 5, 2013 and was not returned to the CCRB. A search of the NYC Department of Correction database showed that § 87(2)(b) is not currently incarcerated.

NYPD Statements:

Subject Officer: PO AHSAN ZAFAR

- *PO Zafar is a 5'9" tall, 180-pound Asian man with black hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.*
- *PO Zafar did not have his memo book at the time of the interview and did not remember his tour. He believed he worked from July 31, 2013 into August 1, 2013. He remembered that he worked with PO Brittany McGee and PO Scott Berger. They were in plainclothes in vehicle #602, an unmarked black Crown Victoria.*

Memo book

At 1:05 a.m., PO Zafar had one arrest at Faile Street and Spofford Avenue for § 87(2)(b) (encl. 5A-5C).

Complaint and Arrest Report

PO Zafar noted that § 87(2)(b) was in possession of a large quantity of crack and that no physical force was used (encl. 5D-5H).

CCRB Statement

On January 15, 2014, PO Zafar was interviewed at the CCRB (encl. 5K-5L).

Two to three hours prior to 1:42 a.m. on August 1, 2013, PO Zafar, PO Brittany McGee and PO Scott Berger observed § 87(2)(b) riding his bike around the neighborhood. § 87(2)(b) rode through a red light and the wrong way on a one-way street, causing hazardous conditions for

vehicles and pedestrians. The officers did not stop him at that time because to do so, they would have had to drive the wrong way on a one-way street.

Around 1:42 a.m., § 87(2)(b) rode his bike towards the officers' vehicle on a one-way street, and they decided to stop him. The traffic infractions were the only reason they stopped § 87(2)(b) § 87(2)(b).

PO Zafar did not remember which officer instructed § 87(2)(b) to stop, but § 87(2)(b) was compliant and remained seated on his bike. PO Zafar explained that they stopped him because of the traffic violations. § 87(2)(b) said that he was on his bike and PO Zafar told him that did not matter. During this time, § 87(2)(b) looked around nervously and tightly gripped the handlebars of his bike. PO Zafar believed that § 87(2)(b)'s level of nervousness was at a higher level than a traffic stop, a summonsable offense, should warrant. PO Berger stood behind § 87(2)(b).

PO Zafar told him to step off his bike and asked if he had anything on him. Later in the interview, PO Zafar said that he asked § 87(2)(b) if he had any drugs on him, and then if he had any contraband. § 87(2)(b) said no, and PO Zafar asked if he could check § 87(2)(b). Later in the interview, PO Zafar said he asked if he could search § 87(2)(b) and then if he could frisk § 87(2)(b). PO Zafar clarified that he always asks to search, but really means frisk. § 87(2)(b) said that he did not mind.

PO Zafar guided § 87(2)(b) off his bike and frisked him. PO Zafar later said that he did not know if he actually frisked § 87(2)(b). He did not recall if he saw any bulges. Later in the interview, PO Zafar stated that he believed § 87(2)(b) had a weapon on him. As § 87(2)(b) got off his bike, he took off his backpack and PO McGee took the backpack and opened it. PO Zafar did not recall if he or PO McGee ever asked § 87(2)(b) if they could search his backpack. PO Zafar stated that because § 87(2)(b) said that they could search him, the officers could also search his bag. PO Zafar said that it would have been a different situation if § 87(2)(b) said that they could search him, but not his bag.

When PO McGee opened the backpack, she and PO Zafar saw a large quantity of crack. § 87(2)(b) saw that the officers saw the cocaine and ran. Because PO Zafar was already so close to § 87(2)(b), § 87(2)(b) ran less than a half a block before PO Zafar caught him on the sidewalk.

PO Zafar tackled § 87(2)(b) grabbing his upper body. PO Zafar landed on top of § 87(2)(b) who landed face down. § 87(2)(b) punched behind him. PO Zafar did not remember if § 87(2)(b) ever made contact with the punches. PO Zafar tried to grab § 87(2)(b)'s arms. PO Zafar, PO Berger and PO McGee did not punch § 87(2)(b). PO Zafar said he probably had his elbow on § 87(2)(b)'s back. PO Zafar told § 87(2)(b) multiple times to stop resisting, as did PO Berger. PO Zafar, PO Berger and PO McGee did not say "Stop fucking resisting." § 87(2)(b) did not say anything. PO Berger pepper sprayed § 87(2)(b) in the face once.

At some point during the struggle, PO Zafar looked up and saw a crowd of 30 people yelling at the officers. No one tried to intervene physically. PO McGee kept the crowd away from PO Zafar and PO Berger. PO McGee, PO Zafar and PO Berger did not say, "Step the fuck back." PO McGee called for backup and placed the bag of crack on the ground next to their vehicle. By the end of the incident, the backpack was gone. PO Zafar believes someone from the crowd stole the backpack.

A marked police car responded first. When § 87(2)(b) heard the sirens and was pepper sprayed, he gave up, and put his hands behind his back. PO Zafar handcuffed him. PO Zafar held onto one of § 87(2)(b)'s arms and PO Berger held onto the other. They lifted him up and walked him into the marked RMP that responded. § 87(2)(b) could walk, and only said that he wanted to wash out his eyes. Many more units responded, including Sgt. Dervent Williams. PO Zafar did not know at what point Sgt. Williams arrived on scene. Sgt. Williams was not the first officer to respond. PO Zafar did not remember if Sgt. Williams had an operator that day.

A marked RMP transported § 87(2)(b) but PO Zafar did not know who transported § 87(2)(b). All responding units were from PO Zafar's command, but he did not remember who they were.

Subject Officer: PO SCOTT BERGER

- *PO Berger is a 6' tall, 200-pound white man with brown hair and hazel eyes. He was § 87(2)(b) years old at the time of the incident.*
- *PO Berger worked from 8 p.m. on July 31, 2013 until 4:35 a.m. on August 1, 2013 with PO Ahsan Zafar and PO Brittany McGee. They were assigned to Anti-Crime and were in plainclothes in unmarked car #602, a black Crown Victoria.*

Memo book

At 1:35 a.m., there was one male stopped on the corner of Spofford Avenue and Faile Street. The defendant rode his bike the wrong way of the street and almost hit the RMP. The defendant provided no ID. When asked where he lived, he said "I guess." When the book bag was removed, the defendant tried to run and was apprehended by PO Berger and PO Zafar. The defendant resisted arrest and was maced. He sustained a cut on his shoulder from falling to the floor. A large crowd formed around us and they requested backup. PO McGee and PO Zafar saw narcotics inside of the book bag which was not recovered (encl. 5N-5Q).

CCRB Statement

On February 4, 2014, PO Berger was interviewed at the CCRB (encl. 5T-5U). § 87(2)(g)

As they approached § 87(2)(b) § 87(2)(b) dismounted his bicycle. The officers intended to issue § 87(2)(b) a summons for reckless operation of a bicycle. One of the officers (PO Berger did not recall whom) asked for § 87(2)(b)'s ID, which § 87(2)(b) did not provide. PO Berger did not recall if § 87(2)(b) verbally refused to provide his ID or if § 87(2)(b) did not have the ID on him. PO Berger asked him where he lived and § 87(2)(b) said "I guess."

PO Zafar took off § 87(2)(b) backpack and handed it to PO McGee. PO Berger did not remember if PO McGee opened the backpack. PO Zafar made no other physical contact with § 87(2)(b). PO Zafar did not frisk § 87(2)(b) and did not ask to frisk, search or check § 87(2)(b). Other than § 87(2)(b) refusing to provide ID, there was no reason to believe he was armed or dangerous.

PO Berger went to grab § 87(2)(b)'s arm and § 87(2)(b) ran across the street. § 87(2)(b) tripped on the pedestrian ramp. Neither PO Berger nor PO Zafar pushed him. PO Berger did not recall how § 87(2)(b) landed on the ground.

PO Berger pepper sprayed § 87(2)(b) in the face once because § 87(2)(b) was resisting by flailing his arms and tensing his muscles. He did not warn § 87(2)(b) that he may be pepper sprayed if he did not stop resisting arrest. § 87(2)(b) immediately became compliant and put his hands behind his back to be handcuffed. It took less than a minute to handcuff § 87(2)(b). Other than pepper spray, no force was used to combat § 87(2)(b)'s resistance. Neither PO Berger nor PO Zafar punched § 87(2)(b). PO Berger did not say "Stop fucking resisting" and did not remember another officer saying that. Once § 87(2)(b) was handcuffed, no other force was used against him. PO Berger did not say "Step the fuck back" and did not hear another officer say that.

At some point after PO Berger considered § 87(2)(b) to be under arrest, PO McGee unzipped the top of the backpack and looked inside. PO Berger did not know if the backpack was closed completely prior to PO McGee obtaining it. PO Berger did not see what was inside, but was later told by PO McGee that she saw drugs. PO Berger did not recall what kind of drugs. PO Berger did not ask and did not hear another officer ask for permission to open the bag.

Subject Officer: PO BRITTANY MCGEE

- PO McGee is a 5'5" tall, 150-pound white woman with blonde hair and blue eyes.
- PO McGee worked from 8 p.m. on July 31, 2013 until 4:35 a.m. on August 1, 2013. She was assigned to Anti-Crime with PO Ahsan Zafar and PO Scott Berger. They were in unmarked vehicle #602, a black Crown Victoria. PO Berger was the operator. PO McGee sat in the backseat.

Memo book

PO McGee noted that at 1:35 a.m., one male was observed driving his bike recklessly almost hitting the RMP. He dropped his bike and began to run and was detained. He began punching and kicking officers. At 1:40 a.m., one under by PO Zafar. She also noted that a black Northface bag with crack cocaine was taken at the scene (encl. 5W-6Y).

CCRB Statement

On February 5, 2014, PO McGee was interviewed at the CCRB (encl. 5BB-5CC). § 87(2)(g)

PO McGee, PO Berger and PO Zafar exited the vehicle and stopped § 87(2)(b). § 87(2)(b) was calm and was still mounted on his bike with his backpack on. One of the officers asked § 87(2)(b) for his ID. § 87(2)(b) said he would not tell the officers anything and that he had ID on him but he would not give it to them. One of the officers asked where he lived and he said that he would not tell them anything. One of them said that if he did not give them ID, they would take him to the precinct, write him a summons there, and that they would then find out his identity. § 87(2)(b) said he would not tell them anything.

PO McGee instructed § 87(2)(b) to get off his bike. § 87(2)(b) handed PO McGee his already-unzipped black Northface backpack. PO McGee looked inside and saw that right on top was a gallon bag, about a quarter filled with crack cocaine. There was another gallon bag filled with ziplocks. PO McGee did not reach inside of the bag.

PO Berger and PO Zafar were about to handcuff § 87(2)(b) when § 87(2)(b) ran. PO McGee did not remember if the officers made any physical contact with § 87(2)(b) before he ran. She did not remember if § 87(2)(b) was frisked before he ran.

A woman, who PO McGee thought was § 87(2)(b)'s sister, and identified by the investigation as § 87(2)(b) ran towards them yelling "Get off my fucking brother." She held her iPhone and the flashlight was on. PO McGee told her to back up multiple times and told her not to get involved, that § 87(2)(b) was under arrest and that they would explain everything back at the precinct. PO McGee did not say "Step the fuck back" and did not use any discourtesy.

PO McGee did not see how PO Berger and PO Zafar handcuffed § 87(2)(b). She did not see them punch § 87(2)(b) and did not see them pepper spray § 87(2)(b) although PO Berger later told her that he pepper sprayed § 87(2)(b). Once § 87(2)(b) was handcuffed, no force was used against him.

Medical Records

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b), complaining of face pain. He said that he had a confrontation with police officers and was pushed to the ground, resulting in jaw pain. A minor abrasion on his right shoulder was noted.

NYPD Documents

Event § 87(2)(b)

Sector B transported one male to the stationhouse for a crime. The Anti-Crime sergeant requested EMS to the stationhouse because the man was pepper sprayed. A female caller called saying that police arrested and assaulted her brother and that someone recorded it. She already filed a complaint with IAB, but wanted to update some information. She hung up as the call was transferred to IAB (encl. 6A-6B).

Command Log

The command log noted that § 87(2)(b) was pepper sprayed (encl. 6C).

Arrest Photo

There were no visible injuries on § 87(2)(b)'s face. There was a bandage on his right shoulder (encl. 4J).

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of February 20, 2014, more than three months after the filing deadline, with regard to the incident.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians CCRB History

- § 87(2)(b) has been listed as a victim in the following CCRB complaints (encl. 2D):

- § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) e.

- § 87(2)(b) has filed the following CCRB complaints (encl. 2E):

- § 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Subject Officers CCRB History

- PO Zafar has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. 2A).
- PO Berger has been a member of the service for three years and there is one substantiated CCRB allegation against him (encl. 2B).
 - In case 201104672, the Board substantiated a stop allegation. In October 2012, the NYPD did not issue a penalty because it was a duplicate case.
- PO McGee has been a member of the service for three years and there are two substantiated CCRB allegations against her (encl. 2C).
 - In case 201100517, the Board substantiated a stop allegation. In July 2012, PO McGee received instruction.
 - In case 201203485, the Board substantiated a stop allegation. In August 2013, the NYPD did not issue a penalty because it was a duplicate case.

Conclusion

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Identification of Subject Officers

§ 87(2)(b) alleged that PO McGee questioned him about the contents of his bag. § 87(2)(g)

§ 87(2)(b) did not see which officer punched him. § 87(2)(b) said that an officer, identified by the investigation as PO Berger by the description, punched § 87(2)(b) multiple times. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A: Abuse of Authority: PO Ahsan Zafar questioned § 87(2)(b)

§ 87(2)(b) stated that when he stopped his bike, PO McGee asked him what was in his bag and that he replied that nothing was in the bag.

PO Zafar said that § 87(2)(b) looked around nervously and tightly gripped his handlebars. At that moment, § 87(2)(b) was only stopped for a traffic infraction and was going to be issued a summons. PO Zafar believed his level of nervousness was higher than a summons would warrant. PO Zafar asked if he had anything on him, if he had any drugs on him, or if he had any contraband. PO Zafar then asked if he could check, frisk or search § 87(2)(b).

PO McGee and PO Berger said that they asked § 87(2)(b) for pedigree information only.

Officers must have an objective, credible reason, which is not necessarily indicative of criminality, to question a person about their identity, address, destination or reason for being in a certain area. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 1G-1Q). Accusatory questions suggesting criminality of the approached person must be supported by founded suspicion that criminality is afoot. People v. Hollman, 79 N.Y.2d 181 (1992) (encl. 1V-1CC). Nervousness does not provide founded suspicion of criminality. People v. Garcia, 20 N.Y.3d 317 (2012) (encl. 1A-1F).

§ 87(2)(g)

§ 87(2)(g)

Allegation B—Abuse of Authority: PO Brittany McGee searched § 87(2)(b)'s bag.

It is undisputed that PO McGee searched § 87(2)(b)'s bag following his lawful arrest for riding southbound on a northbound one-way street.

§ 87(2)(b) acknowledged riding southbound on a northbound one-way street. § 87(2)(b) stated that when he was stopped, PO McGee asked what was in his bag and he told her that nothing was in the bag. PO McGee told him to let her see what was inside, grabbed it, and began to unzip it.

§ 87(2)(b) ran and did not see if PO McGee looked in the backpack or reached inside. § 87(2)(b) did not see this portion of the incident.

PO Zafar stated that he stopped § 87(2)(b) because of observed traffic violations. He asked § 87(2)(b) if he could frisk, search or check him. § 87(2)(b) consented and because § 87(2)(b) did not tell PO Zafar that he could not look in the backpack, PO Zafar believed he could search the bag. § 87(2)(b) took off his backpack and PO McGee took it and opened it. PO McGee and PO Zafar saw a large quantity of crack inside the backpack. § 87(2)(b) ran.

PO Berger stated that § 87(2)(b) would not provide ID or any identifying information. PO Zafar took off § 87(2)(b)'s backpack and handed it to PO McGee. PO Berger did not remember if she opened the backpack. At some point after PO Berger considered § 87(2)(b) to be under arrest, PO McGee unzipped the top of the backpack and looked inside. He did not know if the backpack was closed prior to PO McGee obtaining it. PO Berger did not ask and did not hear another officer to ask for permission to open the bag.

PO McGee considered § 87(2)(b) to be under arrest after he refused to provide his identification for a summons. One of the officers told him that if he did not give them ID, they would take him to the precinct and write him a summons there. § 87(2)(b) dismounted his bike and handed his already unzipped backpack to PO McGee, who saw that inside was a bag of crack. She did not reach inside of the bag.

An arrestee's bag may not be searched incident to arrest without a warrant unless there is reasonable belief that the arrestee may gain possession of a weapon in the bag or destroy evidence in the bag. People v. Gokey, 60 N.Y.2d 309 (1983) (encl. 1DD-1FF).

§ 87(2)(g)
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Allegation C—Abuse of Authority: PO Ahsan Zafar frisked § 87(2)(b)

§ 87(2)(b) alleged that as PO McGee unzipped his bag, PO Zafar frisked him. § 87(2)(b) ran because he did not want to be bothered by officers.

PO Zafar stated that when he stopped § 87(2)(b) he looked around nervously. PO Zafar believed his level of nervousness was at a higher level than a summonsable offense should warrant. PO Zafar asked § 87(2)(b) if he had anything on him, if he had any drugs on him, or if he had any contraband. § 87(2)(b) said no and PO Zafar then asked if he could check, search or frisk him. PO Zafar finally stated that always asks to search, but really means frisk. § 87(2)(b) said he did not mind. PO Zafar first said that he frisked § 87(2)(b) and then later said that he did not know if he actually frisked § 87(2)(b). He did not recall if he saw any bulges.

PO Berger denied that § 87(2)(b) was frisked, and PO McGee did not recall if he was frisked. Both stated that they considered § 87(2)(b) to be under arrest because he refused to provide identification to be issued a summons.

PO Zafar recanted his initial statement to say that he did not remember if he actually frisked § 87(2)(b) but because he did not deny it, the investigation determined that PO Zafar frisked § 87(2)(b).

An officer may frisk a person when the officer has a reasonable suspicion that he is in physical danger because the person is armed. People v. DeBour, 40 N.Y.2d 210 (1976). Nervousness does not even provide founded suspicion of criminality, much less reason to believe that a person is armed. People v. Garcia, 20 N.Y.3d 317 (2012) (encl. 1A-1F).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Force: PO Scott Berger used physical force against § 87(2)(b)

§ 87(2)(b) stated that he was punched in the face by an officer. In a phone statement, § 87(2)(b) stated that PO Berger punched him multiple times, but did not specify where. Contact attempts were exhausted with her, and she did not provide a statement.

PO Berger denied punching § 87(2)(b). PO McGee and PO Zafar denied seeing an officer punch § 87(2)(b) or doing so themselves.

There are no visible injuries on § 87(2)(b)'s face in his arrest photo.

Four days after the incident, § 87(2)(b) went to § 87(2)(b) and complained of face pain. The medical records note that he had a confrontation with officers and was pushed to the ground.

§ 87(2)(g)

Allegation E—Force: PO Scott Berger used pepper spray against § 87(2)(b)

It is undisputed that PO Scott Berger used pepper spray against § 87(2)(b).

§ 87(2)(b) stated that he ran away from officers and that PO Zafar pushed him to the ground, laying on top of him. PO Zafar tried to grab him arms to handcuff him but § 87(2)(b) was lying on top of his arms so the officers could not handcuff him. The officers told him multiple times to stop resisting. PO Berger pepper sprayed § 87(2)(b).

Patrol Guide Procedure 212-95 allows officers use pepper spray to affect an arrest of someone who is resisting (encl. 1R-1V).

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]

Allegation F—Discourtesy: PO Brittany McGee spoke discourteously to § 87(2)(b) [Redacted]
§ 87(2)(b) [Redacted] alleged that PO McGee said “Step the fuck back” to § 87(2)(b) [Redacted] made no discourtesy allegations. As stated above in Attempts to Contact Civilians, § 87(2)(b) [Redacted] did not provide a statement to the CCRB.

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date